IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2005

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.1021 OF 2003

1. Dhanalakshmi
2. T.Ravikumar
3. T.Geetha
4. T.Saravanan .. Appellants/Plaintiffs

-vs-

S.Thangavelu .. Respondent/Defendant

Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree of the VI Additional Judge, City Civil Court, Madras, passed in A.S.No.12 of 2002 dated 25.09.2002 reversing the Judgment and Decree dated 1.8.2001 passed in O.S.No.104 of 1998 on the file of XVII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Venkataraman

For Respondent : Mr.J.R.Doss

JUDGMENT

This Second Appeal has been brought forth by the plaintiffs in a suit seeking to set aside the judgment of the learned VI Additional City Civil Judge, Madras, in A.S.No.12 of 2002 wherein the Judgment of the trial court granting a decree in favour of the plaintiffs/appellants was set aside.

2. The appellants before this Court as plaintiffs filed the suit with the following allegations:

In respect of the suit property, the defendant executed a settlement deed on 9.7.1986 in favour of the plaintiffs. The said property was purchased by him under three different sale deeds on 15.4.1982, 20.6.1984 and 14.6.1984 respectively. While the absolute right was given to the plaintiffs 2 to 4, the power over the property was given to his wife, the first plaintiff herein, till her life time. The possession was also given to her that day. She was maintaining the family out of the income derived from the property by way of rent. She borrowed money and constructed the building. Plaintiffs 2 to 4 were put on education. The second plaintiff was employed. The fourth plaintiff was studying. The marriage of the third plaintiff was held on 15.9.1997. The first plaintiff started a business under the name and style of Om Sakthi Oils. Out of the income derived from the said

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business, the debts were discharged by her. As a husband, the defendant has failed in his responsibility. He left the family in lurch in the year 1990, and he issued a notice on 6.11.1997 stating that the settlement deed dated 9.7.1986, was cancelled by way of a cancellation deed dated 5.11.1997. A reply notice was sent by the plaintiffs on 12.11.1997. The suit property was not mortgaged. There is no contingency under the settlement deed. If the settlement is to be cancelled, then, the same can be done only through Court. The settlement made in favour of the plaintiffs 2 to 4 cannot be cancelled, since the cancellation deed will not bind them. Hence the suit.

3. The respondent/defendant contested the suit with the following allegations:-

The settlement deed executed by the defendant, was a revocable one. They were self acquired properties. Thus, he has got a right to cancel the said deed. The first plaintiff was not treating him properly. She was harassing him by spending the rental amount for her brothers. She has not constructed the first floor. She was not spending money for her children. The first son was employed. She was receiving more than Rs.5,000/- as rent. The daughter's marriage was conducted according to her will and pleasure. He has got a good name in the locality. But, the same was spoiled by her by lodging a complaint before the Police Station against him. She had mortgaged the suit property in order to help his brother who was residing and doing business at Soolurpet. She borrowed Rs.40,000/- from one Mannar Chetty. He left the family for pilgrimage and returned from Amarnath. The first plaintiff stopped paying Rs.200/- to his mother. He has got a right to cancel the settlement deed, since the same has been specifically mentioned in the document itself. Hence, the suit was to be dismissed.

4. Necessary issues were framed by the trial court namely the XVII Assistant City Civil Court, Madras, and on trial and after considering the evidence, both oral and documentary, the trial Court granted a decree in favour of the plaintiffs declaring that the cancellation deed in respect of Ex.A1, settlement deed, was not valid. Aggrieved, the defendant took it on appeal. The appellate forum, on enquiry, reversed the judgment of the trial Court. Hence, this second appeal at the instance of the plaintiffs.

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5. At the time of admission, the following substantial questions of law were formulated by this Court.

> 1) When the deed of Settlement Ex.A1 is accepted and acted upon by the Settlee whether the Settlor can revoke the same?
>
> 2) When the Trial Court basing upon the oral and documentary evidence came to the conclusion that Ex.A1 is a settlement deed, whether the Appellate Court is justified in reversing the said finding basing on mere presumption and surmises?

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6. Heard the learned counsel for the appellants and also for the respondent.

7. Admittedly, the first appellant is the wife and the other appellants 2 to 4 are the children of the respondent herein. He executed a settlement deed on 9.7.1986, which was marked as Ex.A1. Following the same, he executed a revocation deed marked as Ex.A6, on 5.11.1997, stating that the settlement deed originally executed by him under Ex.A1, was cancelled. On exchange of notices, the plaintiffs filed the suit seeking a declaration that Ex.A6 cancellation deed, dated 5.11.1997 was invalid in law.

8. The learned counsel for the appellants put forth before this Court two prime contentions. Firstly, the settlement deed executed by the defendant in favour of the plaintiffs, was an absolute one, and it was irrevocable since no contingencies were stipulated therein for revocation, and apart from that, the settlement has also been acted upon. Secondly, while the defendant himself put forth the plea that it was a settlement deed; but, he had the power of revocation, the first appellate forum construed the document as one Will and also revocable and set aside the judgment of the trial Court.

9. In order to substantiate his contentions, the learned counsel for the appellants relied on the following decisions:

1. Ponnuchami Servai vs. Balasubramanian alias Suresh-(1981)II MLJ 455.

2. Sarojini Ammal and 5 others vs. Krishnaveni Ammal alias Baby Ammal and 3 others-1990-1 LW 599.

10. Countering the above contentions, the learned counsel for the respondent would submit that the document what was executed by the respondent was a Will; that in order to construe the document, the entire document should be read; that a reading of the document would clearly reveal that he retains the right of revocation; that it is not correct on the part of the appellants to state that there is no contingency in the document; that the contingency in the document itself is implied; that the purpose is also stated therein, and under the circumstances, it has got to be construed as a Will. He would further add that in the instant case, it was not the intention of the defendant to execute a settlement deed, and the same is also evident from the document. In his endeavour, he took the Court to the recitals in the deed.

11. In support of his contentions, the learned counsel for the respondent has placed reliance on the following decisions:

1. Muthuswami vs. Palaniswami Gounder and others- (2001)3 M.L.J.178.

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2. Poongavanam vs. Perumal Pillai and another-(1997)I MLJ 169.

3. Mauleshwar Mani & Ors. vs. Jagdish Prasad and Ors.-2002 (1) CTC 443.

4. Ramaswami Naidu and another vs. Gopalakrishna Naidu-AIR 1978 MADRAS 54.

5. Ponnuchami Servai vs. Balasubramanian alias Suresh and others-(1981)II MLJ 455.

12. The Court made its attention on the submissions made and had a perusal of the judgments relied on by either side.

13. Admittedly, the defendant executed a deed on 9.7.1986. The document is also named as one "Settlement Deed". Needless to say that merely because a document is styled as a settlement deed, it should be a settlement deed. The Court has to necessarily look into the recitals of the document before taking a decision on the question whether it is a settlement deed or otherwise. It would be more appropriate to reproduce the wordings as employed by the defendant in the document. Ex.A1 reads as follows:

> "Now that the settlor out of his love and affection towards his wife Smt.Dhanalakshmi the settlee herein is desirous of settling the aforesaid property for her life time and thereafter after her death the entire property shall be devolved and taken over and may be succeeded to their legal representatives viz., the children of the settle absolutely with full powers of alienation and dispossession, and in the meantime if the settlee wants to raise any moneys or funds for her family purposes, for the upliftment of the children she can mortgage the property without any alienation and enjoy the mesne profits absolutely to herself during her life time. This settlement is revocable, and can be modified at any time during the life time of the settlor. There is no consideration is passed to the settlor by the settlee for executing this Settlement deed but purely out of love and affection.

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14. It is well settled proposition of law that to construe a document as a settlement, there should be a specific or clear and absolute instant disposition and transfer of interest in the property in preasenti in favour of the beneficiary under the document. In the instant case, the very reading of the recitals found therein, would clearly reveal that the document is acted upon the very time, and the dispossession has been made in preasenti. Thus, it would indicate that it is a settlement, if that test is applied. Nowhere in the written statement, the defendant has whispered that it is a Will; but, it is a settlement and he reserves the right of revocation. It is a matter of surprise to note how the appellate forum took its own view and branded the document as a Will.

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15. Now coming to the contention put forth by the learned counsel for the respondent that he is having the rights reserved for revoking the document, the Court has to necessarily disagree with him for the simple reason that in a given case like this, once a settlement deed is executed, the Court has to look into whether the mere statement that he reserves a right of revocation would be suffice, or the document would speak of the contingencies under which he can revoke the same. A thorough reading of Ex.A1 does not reveal any contingency at all, and thus, the contention put forth by the learned counsel for the respondent that contingency is employed has got to be discountenanced. Once the entire document is gone into, as rightly put forth by the learned counsel for the respondent, it would clearly reveal that it is a settlement deed and not a Will at all. Apart from that, from the evidence available, it would be clear that the entire property was handed over to the first plaintiff, and she has been maintaining the other plaintiffs and the plaintiffs 2 to 4 were put on education out of the income therefrom, and a part of the property has also been constructed, and thus, the settlement deed has been acted upon pursuant to the handing over of possession in preasenti. All these would go to show that it is only a settlement deed and the document has also been acted upon. The mere recital that he reserves the right of revocation, cannot give him a power of revocation. Under the circumstances, the first appellate Court has thoroughly failed to appreciate the positions, both factual and legal, and the judgment of the trial Court has got to be restored. Accordingly, the judgment and decree of the first appellate Court are set aside, and the judgment and decree of the trial Court are restored.

16. In the result, this second appeal is allowed, directing the parties to bear their costs.

23.9.2005

nsv/

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The VI Additional Judge,
City Civil Court, Chennai.

2. The XVII Assistant Judge,
City Civil Court, Chennai.

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3. The Registrar,
City Civil Court, Chennai

4. The Section Officer,
V.R.Section.

1 cc to Mr.K.Venkataraman, Advocate, SR.40004
2 ccs to Mr.J.R.Doss, Advocate, SR.40168

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